



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES **Assigned** 23-Jul-2018 **PCW** 30-Jul-2018 **Screening** 30-Jul-2018 **EPA Due**

RESPONDENT/FACILITY INFORMATION

Respondent Eltje Frans Brand dba Indian Ridge Dairy
Reg. Ent. Ref. No. RN102073178
Facility/Site Region 3-Abilene **Major/Minor Source** Minor

CASE INFORMATION

Enf./Case ID No. 56459 **No. of Violations** 3
Docket No. 2018-1045-AGR-E **Order Type** 1660
Media Program(s) Water Quality **Government/Non-Profit** No
Multi-Media **Enf. Coordinator** Aaron Vincent
EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0 **Maximum** \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$5,750

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -8.0% **Adjustment** **Subtotals 2, 3, & 7** -\$460

Notes Enhancement for one dissimilar NOV and reduction due to High Performer classification.

Culpability No 0.0% **Enhancement** **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0

Economic Benefit **Subtotal 6** \$0
Total EB Amounts \$2,210
Estimated Cost of Compliance \$2,830
0.0% Enhancement*
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$5,290

OTHER FACTORS AS JUSTICE MAY REQUIRE 41.8% **Adjustment** \$2,210

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes An enhancement is recommended to capture the avoided cost of compliance associated with Violation Nos. 1 through 3.

Final Penalty Amount \$7,500

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$7,500

DEFERRAL 20.0% **Reduction** **Adjustment** -\$1,500

Reduces the Final Assessed Penalty by the indicated percentage.

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$6,000

Screening Date 30-Jul-2018

Docket No. 2018-1045-AGR-E

PCW

Respondent Eltje Frans Brand dba Indian Ridge Dairy

Policy Revision 4 (April 2014)

Case ID No. 56459

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102073178

Media [Statute] Water Quality

Enf. Coordinator Aaron Vincent

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Number | Adjust. |
|-------------------------------|--|--------|---------|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one dissimilar NOV and reduction due to High Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -8%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -8%

Screening Date 30-Jul-2018

Docket No. 2018-1045-AGR-E

PCW

Respondent Eltje Frans Brand dba Indian Ridge Dairy

Policy Revision 4 (April 2014)

Case ID No. 56459

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102073178

Media [Statute] Water Quality

Enf. Coordinator Aaron Vincent

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1), 305.125(4), and 321.37(d), Tex. Water Code § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920297, Part III.A.12(c)(1)

Violation Description

Failed to prevent an unauthorized discharge of wastewater from a concentrated animal feeding operation into or adjacent to any water in the state. Specifically, on April 14, 2018, overapplication to Land Management Unit ("LMU") Center Pivot ("CP") No. 5 resulted in the discharge of approximately 84,000 gallons of agricultural wastewater through LMU CP No. 5 and LMU No. 4 into an unnamed tributary of Mercer Creek.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | x | |
| Potential | | | |

Percent 15.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

20 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$3,750

One monthly event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

| | Before NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---------------|----------------|-----------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Estimated EB Amount \$2,005

Statutory Limit Test

Violation Final Penalty Total \$4,891

This violation Final Assessed Penalty (adjusted for limits) \$4,891

Economic Benefit Worksheet

Respondent Eltje Frans Brand dba Indian Ridge Dairy
Case ID No. 56459
Reg. Ent. Reference No. RN102073178
Media Water Quality
Violation No. 1

Percent Interest 5.0
Years of Depreciation 15

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Costs Saved | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|-------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/Construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | \$500 | 26-Apr-2018 | 27-Apr-2018 | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$100 | 14-Apr-2018 | 14-Apr-2018 | 0.00 | \$0 | n/a | \$0 |

Training cost is the estimated cost to conduct employee training to ensure LMU center pivots are monitored to prevent excess irrigation from leaving the irrigation sites. Date required is the investigation date. Final date is the date the training occurred.

Notes for DELAYED costs

Estimated cost to cease wastewater irrigation activities that caused the unauthorized discharge. Date required is the date that the unauthorized discharge began. Final date is the date the unauthorized discharge ceased.

Avoided Costs ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|---------|-------------|------------|------|-----|---------|---------|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs | \$2,000 | 14-Apr-2018 | 4-May-2018 | 0.05 | \$5 | \$2,000 | \$2,005 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated avoided cost to clean and remediate the areas affected by the unauthorized discharge, prior to the next rain event. Date required is the date the unauthorized discharge began. Final date is the date the next rain event occurred after the unauthorized discharge.

Approx. Cost of Compliance

\$2,600

TOTAL

\$2,005

Screening Date 30-Jul-2018
Respondent Eltje Frans Brand dba Indian Ridge Dairy
Case ID No. 56459
Reg. Ent. Reference No. RN102073178
Media [Statute] Water Quality
Enf. Coordinator Aaron Vincent

Docket No. 2018-1045-AGR-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and 321.44(a), and TPDES General Permit No. TXG920297, Part IV.B.5

Violation Description

Failed to provide verbal notification no later than 24 hours after becoming aware of the unauthorized discharge and provide written notification within 14 business days.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | | | |

Percent 0.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | x | | |

Percent 5.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

26 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

| | |
|---------------|---|
| Extraordinary | |
| Ordinary | |
| N/A | x |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,630

This violation Final Assessed Penalty (adjusted for limits) \$1,630

Economic Benefit Worksheet

Respondent Eltje Frans Brand dba Indian Ridge Dairy

Case ID No. 56459

Reg. Ent. Reference No. RN102073178

Media Water Quality

Violation No. 2

Percent Interest 5.0
Years of Depreciation 15

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Costs Saved | EB Amount |
|--|-----------|---------------|-------------|------|----------------|-------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/Construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | \$25 | 3-May-2018 | 11-May-2018 | 0.02 | \$0 | n/a | \$0 |
| Notes for DELAYED costs Estimated cost to submit written notification to the TCEQ Stephenville Regional Office and Enforcement Division within 14 business days after a discharge occurs. Date required is the date the notification was due. Final date is the date the notification was submitted. | | | | | | | |
| Avoided Costs | | | | | | | |
| ANNUALIZE avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs | \$5 | 14-Apr-2018 | 15-Apr-2018 | 0.00 | \$0 | \$5 | \$5 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Notes for AVOIDED costs Estimated avoided cost to provide 24-hour verbal notification to the TCEQ Stephenville Regional Office within 24 hours after becoming aware of the unauthorized discharge. Date required is the date the unauthorized discharge occurred. Final date is the date the notification was due. | | | | | | | |
| Approx. Cost of Compliance | | | | | \$30 | | |
| TOTAL | | | | | \$5 | | |

Screening Date 30-Jul-2018

Docket No. 2018-1045-AGR-E

PCW

Respondent Eltje Frans Brand dba Indian Ridge Dairy

Policy Revision 4 (April 2014)

Case ID No. 56459

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102073178

Media [Statute] Water Quality

Enf. Coordinator Aaron Vincent

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.36(b), and TPDES General Permit No. TXG920297, Part III.A.5(c)

Violation Description Failed to collect and analyze samples within the first 30 minutes of the initial discharge. Specifically, no samples were collected for an unauthorized discharge that occurred on April 14, 2018.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------|----------|-------|
| | Major | Moderate | Minor |
| Actual | | | |
| Potential | | | x |

Percent 3.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | | | |

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1 Number of violation days 1

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

| | Before NOE/NOV | NOE/NOV to EDPRP/Settlement Offer |
|---------------|----------------|-----------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$200

Violation Final Penalty Total \$978

This violation Final Assessed Penalty (adjusted for limits) \$978

Economic Benefit Worksheet

Respondent Eltje Frans Brand dba Indian Ridge Dairy

Case ID No. 56459

Reg. Ent. Reference No. RN102073178

Media Water Quality

Violation No. 3

Percent Interest 5.0 | **Years of Depreciation** 15

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Costs Saved | EB Amount |
|--|-----------|---------------|-------------|-------|----------------|-------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/Construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |
| Notes for DELAYED costs | | | | | | | |
| Avoided Costs | | | | | | | |
| ANNUALIZE avoided costs before entering item (except for one-time avoided costs) | | | | | | | |
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs | \$200 | 14-Apr-2018 | 14-Apr-2018 | 0.00 | \$0 | \$200 | \$200 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Notes for AVOIDED costs | | | | | | | |
| Estimated avoided cost to collect samples within the first 30 minutes of the initial discharge. Date required is the date that the unauthorized discharge began. Final date is the date samples were required to be collected. | | | | | | | |
| Approx. Cost of Compliance | | \$200 | | TOTAL | | \$200 | |

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

Compliance History Report for CN600802631, RN102073178, Rating Year 2017 which includes Compliance History (CH) components from September 1, 2012, through August 31, 2017.

Customer, Respondent, or Owner/Operator: CN600802631, Eltje Frans Brand **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102073178, Indian Ridge Dairy **Classification:** HIGH **Rating:** 0.00

Complexity Points: 2 **Repeat Violator:** NO

CH Group: 12 - Agriculture, Forestry, Fishing, and Hunting

Location: 14750 State Highway 16 in Comanche, Comanche County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

WASTEWATER AGRICULTURE PERMIT TXG920297

AIR NEW SOURCE PERMITS ACCOUNT NUMBER CT0031D

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 86179

Compliance History Period: September 01, 2012 to August 31, 2017 **Rating Year:** 2017 **Rating Date:** 09/01/2017

Date Compliance History Report Prepared: August 21, 2018

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: August 21, 2013 to August 21, 2018

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Aaron Vincent

Phone: (512) 239-0855

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

| | | |
|--------|-------------------|-----------|
| Item 1 | November 20, 2015 | (1294069) |
|--------|-------------------|-----------|

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

| | | | | |
|---|--------------|--|-----------|--------------------------|
| 1 | Date: | 01/23/2018 | (1464900) | |
| | Self Report? | NO | | Classification: Moderate |
| | Citation: | 30 TAC Chapter 321, SubChapter B 321.40(h) | | |
| | | TXG920297 Part III.A.12(f)(1) PERMIT | | |
| | Description: | Failure to maintain proper application buffer distances. | | |
| | Self Report? | NO | | Classification: Moderate |
| | Citation: | 30 TAC Chapter 305, SubChapter F 305.125(8) | | |

30 TAC Chapter 321, SubChapter B 321.33(d)

30 TAC Chapter 321, SubChapter B 321.33(e)

30 TAC Chapter 321, SubChapter B 321.33(g)

30 TAC Chapter 321, SubChapter B 321.33(g)(1)

30 TAC Chapter 321, SubChapter B 321.33(g)(2)

30 TAC Chapter 321, SubChapter B 321.33(g)(3)

TXG920297 Part II(C)(3) PERMIT

Description: Failure to apply for a Substantial change.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ELTJE FRANS BRAND DBA
INDIAN RIDGE DAIRY
RN102073178**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2018-1045-AGR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Eltje Frans Brand dba Indian Ridge Dairy (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, together stipulate that:

1. The Respondent owns and operates a concentrated animal feeding operation ("CAFO") located at 14750 State Highway 16 in Comanche, Comanche County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$7,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$6,000 of the penalty and \$1,500 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN.

CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
 - a. On April 14, 2018, ceased wastewater irrigation activities that caused the unauthorized discharge of wastewater from Land Management Unit ("LMU") Center Pivot ("CP") No. 5;
 - b. On April 27, 2018, conducted employee training to ensure that LMU center pivots are monitored to prevent excess irrigation from leaving the irrigation sites;
 - c. By May 4, 2018, the unauthorized discharge was cleared by a rain event; and
 - d. On May 11, 2018, submitted written notification of an unauthorized discharge to the TCEQ Stephenville Regional Office.

II. ALLEGATIONS

During an investigation conducted on April 26, 2018, an investigator documented that the Respondent:

1. Failed to prevent an unauthorized discharge of wastewater from a CAFO into or adjacent to any water in the state in violation of 30 TEX. ADMIN. CODE §§ 305.125(1), 305.125(4) and 321.37(d), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920297, Part III.A.12(c)(1). Specifically, on April 14, 2018, overapplication to LMU CP No. 5 resulted in the discharge of approximately 84,000 gallons of agricultural wastewater through LMU CP No. 5 and LMU No. 4 into an unnamed tributary of Mercer Creek.
2. Failed to provide verbal notification no later than 24 hours after becoming aware of the unauthorized discharge and provide written notification within 14 business days, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.44(a), and TPDES General Permit No. TXG920297, Part IV.B.5.

3. Failed to collect and analyze samples within the first 30 minutes of the initial discharge, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.36(b), and TPDES General Permit No. TXG920297, Part III.A.5(c). Specifically, no samples were collected for an unauthorized discharge that occurred on April 14, 2018.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Eltje Frans Brand dba Indian Ridge Dairy, Docket No. 2018-1045-AGR-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

9-28-18

Date

FRANK BRAND

Name (Printed or typed)
Authorized Representative of
Eltje Frans Brand dba Indian Ridge Dairy

OWNER

Title

☐ If mailing address has changed, please check this box and provide the new address below: